



POLICE DEPARTMENT CITY OF NEW YORK

July 18, 2016

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Ashley Musacchio
Tax Registry No. 946149
50 Precinct
Disciplinary Case No. 2015-14587

Charges and Specifications:

1. Said Police Officer Ashley Musacchio, while assigned to the 50th Precinct, on September 6, 2015 and through September 7, 2015 was wrongfully and without just cause absent from said residence without permission of said officer's Medical Division Sick Desk Supervisor.
P.G. 205-01 Page 2, Paragraph 4 - REPORTING SICK
Operations Order No. 22 Page 1, Paragraph 3 - PERSONNEL MATTERS
2. Said Police Officer Ashley Musacchio, while assigned to the 50th Precinct, on September 6, 2015 and through September 7, 2015 was wrongfully and without just cause absent from said resident county without prior approval of the Chief of Personnel to wit: Police Officer Musacchio traveled to [REDACTED]
Operations Order No. 22 Page 1, Paragraph 4 - PILOT PROGRAM -
HOME CONFINEMENT WHILE ON SICK LEAVE

Appearances:

For the Department: Jessica Brenes, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For Respondent: Stuart London, Esq.
Worth, Longworth & London, LLP
111 John Street - Suite 640
New York, NY 10038

Hearing Date:
June 20, 2016

Decision:

Pleaded Guilty

Trial Commissioner:

ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 20, 2016. Respondent, through her counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent, who joined the Department in January 2008, testified that on September 3, 2015, she underwent surgery [REDACTED]. In the days that followed that surgery, she was in extreme pain and was [REDACTED] two photographs of her [REDACTED] were admitted [REDACTED]. Respondent's mother-in-law, who resided in [REDACTED], came to Respondent's [REDACTED] home to stay with Respondent while she was on sick leave, and help out with her one-year old son. (Tr. 12-15, 25)

At about 1500 hours on September 6, Respondent's mother-in-law received word that her husband, who had numerous health issues of his [REDACTED] [REDACTED] required immediate assistance [REDACTED]. [REDACTED]
[REDACTED]
[REDACTED] Respondent agreed to take her child and

accompany her mother-in-law to [REDACTED] in order to help out her father-in-law. Respondent waited until her tour time concluded at about 1528 hours, and afterward departed for [REDACTED] with her mother-in-law. She did not call the sick desk before departing. (Tr. 16-17, 26)

Respondent testified that it was her understanding that before her next scheduled tour, which was 0700 hours the following morning, she needed to notify the sick desk. Accordingly, early on the morning of September 7 she called the sick desk in Lefrak City. When Respondent informed them that she was in [REDACTED] because of an emergency, she was told that she was not allowed to be there and needed to call One Police Plaza to obtain permission. Respondent tried calling the number she was given, but it was Labor Day and there was no answer. (Tr. 17-18, 29, 32)

Uncertain what to do next, Respondent, who was assigned to the 50 Precinct, called the sick desk in the Bronx. The woman who answered told her she needed to ask the lieutenant for permission. Respondent then spoke with Lieutenant Hilliard and explained her situation. According to Respondent, the lieutenant said there was no problem, and took Respondent's cell phone number in case he needed to reach her. About ten minutes later, Lieutenant Hilliard called her back, and sounded very angry. He chided Respondent for not telling him that she had called Lefrak, and informed her that she needed to return to her residence immediately. Respondent explained that due to her medication she was in no condition to drive, and had no one to drive her until later that day. When Respondent's husband, a firefighter, finished work, he picked up Respondent and their child and drove them back [REDACTED])

Respondent acknowledged that she had called the sick desk on previous occasions, and so had some familiarity with the notification requirements. She explained, though, that there was a procedural change at some point that relaxed the need to call in on non-tour times. (Tr. 27) Respondent also claimed that at the time of this incident, she did not know that an officer who was Chronic A could not leave her residence while on sick leave without permission. Indeed, Respondent testified that she does not think she was even aware on September 6, 2015 that she had been designated Chronic A, though she couldn't recall for sure whether she knew. (Tr. 13, 25, 35) She stated that as a result of this case, she now knows the rule, though she also admitted she has not read the Patrol Guide sections dealing with sick leave. (Tr. 24, 29-30). Respondent noted that as a result of the charges against her in this case, she lost her assignment as assistant to the ICO at the 50 Precinct, which she had held since returning from pregnancy leave. (Tr. 11-12)

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 7, 2008. Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. The Department Advocate recommends that Respondent forfeit twenty (20) vacation days, while counsel for Respondent suggests that a penalty of ten (10) days is appropriate.

Patrol Guide section 205-01 (4) requires officers on sick leave to "remain at (their) residence or other authorized location unless permission to leave is granted by (the) district surgeon or Sick Desk supervisor." Operations Order No. 22, issued 03-31-11, supplements this guideline with a provision allowing officers to "leave their residence

during times that are outside of their regularly scheduled tour of duty and on their regular days off." That allowance, however, does not apply to officers who have been designated Chronic Sick A: those officers still must obtain permission in order to leave their residence. Further, the Operations Order reminds all officers on sick leave that they are required to get permission from the Chief of Personnel before they leave their resident county.

Counsel for Respondent suggests that these guidelines are not absolute, and should be considered as more of a guide to members of the service, with allowances made depending on the circumstances. This tribunal disagrees. The guidelines set forth in the Patrol Guide, as well as the Department's Operations Orders, place members of the service on notice of their obligations, and they are expected to adhere to them. As the Department Advocate stated, not being aware of what is in the Patrol Guide is not an excuse. There is no question here that Respondent's conduct ran afoul of these guidelines, and that some penalty is appropriate.

Nevertheless, there are factors present in this case that support mitigation of the 20-day penalty recommended by the Department. Following her surgery, Respondent made efforts to remain at her residence with her one-year old child, with the help of her mother-in-law. Respondent's decision to leave her residence was borne out of an unexpected medical situation. When she first received news of her father-in-law's health emergency, Respondent waited until the end of her tour before leaving for [REDACTED]. She then called the sick desk the following morning around the time her next tour would have started, which she believed was the appropriate procedure. This was not a case where Respondent was trying to conceal her whereabouts from the Department; rather,

she called Lefrak and the Bronx Sick Desk on her own initiative and candidly informed them of her location. As counsel for Respondent suggested, Respondent's intentions were good.

In *Disciplinary Case No.* [REDACTED] a case cited by the Department Advocate, a 10-year detective with no disciplinary history negotiated a plea of ten (10) vacation days just for being absent from his residence; there was no allegation in that case that the detective left his county of residence. However, two recent cases are even more on point: in *Disciplinary Case No.* [REDACTED], a 15-year lieutenant with one prior disciplinary finding (a 2009 case for failing to properly supervise an undercover vice operation), negotiated a plea of fifteen (15) days for traveling from his [REDACTED] residence to [REDACTED] multiple times while on sick leave in order to visit his elderly parents. And in *Disciplinary Case No.* [REDACTED], a nine-year officer with one prior disciplinary finding (a 2012 Bronx summons case) negotiated a plea of ten (10) days for being absent from his residence on three occasions while on sick leave; on one of those occasions, he left his [REDACTED] residence to go to [REDACTED] [REDACTED] to help a friend move.

Here, Respondent, who has no disciplinary history, deserves some consideration for her proactive efforts to contact the Sick Desk, and a penalty of less than twenty (20) days is warranted here. At the same time, she is accountable for knowing and obeying the Department's guidelines, and it is somewhat troubling that she hasn't read the Patrol Guide section dealing with sick leave. After considering the totality of the issues and circumstances in this matter, Respondent's lack of disciplinary history, and the relevant

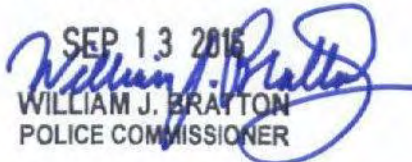
precedent, I recommend that Respondent forfeit twelve (12) vacation days as the appropriate penalty.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

SEP 13 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ASHLEY MUSACCHIO
TAX REGISTRY NO. 946149
DISCIPLINARY CASE NO. 2015-14587

Respondent was appointed to the Department on January 7, 2008. Her last three annual evaluations were a 4.0 overall rating of "Highly Competent" in 2015 and 3.5 ratings of "Highly Competent/Competent" in 2013 and 2014. She has no medals.

Respondent has no prior disciplinary history. [REDACTED]

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials